

Amendment Under Rule 111  
Appl. No. 10/614,002

### REMARKS

Claims 1-3, 5-9, 11-16, 18 and 19 are all of the pending claims, with claims 1, 7 and 14 being written in independent form.

#### **I. Claim Rejection Under 35 USC §112(1<sup>st</sup>):**

The Examiner rejects all of the pending claims under 35 USC §112(1<sup>st</sup>) because “a flow duct that is shorter than the vertical height of the transition piece” (as recited in claims 1, 7 and 14) is allegedly not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. The basis for the rejection is that the transition piece has a variable height and the disclosure does not enable which height of the transition piece the chimney does not exceed. Applicant disagrees.

The basis for the rejection is incorrect and tenable only by placing a strained interpretation on the straightforward claim language. Consider the heights of two structures, such as a pyramid and cube. Assume that the pyramid is 100 feet tall at the vertex, and that the cube is only one foot tall. The cube is certainly shorter than the pyramid. This is true notwithstanding the fact that the triangular sides of the pyramid slope all the way down to the base of the pyramid. Indeed, the “height” of an object refers to the maximum height of the object, and not to the height of some other arbitrary portion of the object. The Examiner contentions otherwise are simply incorrect.

In any event, and as a path of least resistance, Applicant amends independent claims 1, 7 and 14 to recite that the flow duct is shorter than “the maximum vertical height” of the transition piece. Support for this amendment can be found (for example) at paragraph [0015], which indicates that the chimney orifice is designed as a flow duct that may be shorter than the *vertical extent* of the transition piece. The Examiner’s attention is also respectfully direct to the figure of the instant application. Here, the chimney orifice 13 is shorter than the maximum vertical height of the transition piece 7.

*For at least these reasons, Applicant respectfully requests the Examiner to reconsider and withdraw the raised rejection under 35 USC §112(1<sup>st</sup>).*

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The Mittricker and Nielsen References

Turning to the next point, Applicant disagrees with the Examiner's characterization of US Patent Application Publication US 2004/0200225 to Mittricker ("Mittricker") and US 5,493,854 to Nielsen ("Nielsen"). The Examiner contends that each reference discloses a chimney that is shorter than the maximum vertical dimension of the transition piece. This is simply incorrect.

Specifically, and with reference to Fig. 1 of Mittricker, the chimney 19 extends vertically beyond the maximum vertical height of the transition piece 12. Similarly, and with reference to Fig. 1 of Nielsen, the chimney 6 extends vertically beyond the maximum vertical height of the transition piece 2. The teachings of the references cited by the Examiner are consistent and clear; the chimney is taller (not shorter) than the transition piece. If the Examiner still contends otherwise, then he is respectfully requested to point out (with more specificity) the part of the reference that is believed to be a chimney that is shorter than a maximum vertical height of the transition piece.

**II. Claim Rejection Under 35 USC §112(2<sup>nd</sup>):**

The Examiner rejects all of the pending claims under 35 USC §112(2<sup>nd</sup>) because "a flow duct that is shorter than the vertical height of the transition piece" (as recited in claims 1, 7 and 14) is allegedly indefinite. Applicant respectfully disagrees. Notwithstanding, as a path of least resistance, Applicant amends claims 1, 7 and 14 as noted above. The amended claims are believed to more particularly point out and distinctly claim the subject matter regarded as the invention, thereby overcoming the rejection under 35 USC §112(2<sup>nd</sup>).

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**CONCLUSION**

Applicant earnestly solicits reconsideration and allowance of all of the pending claims.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY & PIERCE, P.L.C.

By

  
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